

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,622

ARTHUR ROOKARD, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

844

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

LEO A. ROVER,

United States Attorney.

WILLIAM J. PECK,

Assistant United States Attorney.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED SEP 4 1953

Joseph W. Stewart
CLERK

No. 11,622

STATEMENT OF QUESTION PRESENTED

Whether the appellant who moved that his conviction be vacated was entitled, under 28 U.S.C. 2255, to a hearing upon the issues presented.

INDEX

Counterstatement of the Case	Page 1
Statute Involved	4
Summary of Argument	4

Argument:

I. Appellant's Allegations Are Not Within the Scope of Review of a Section 2255 Proceeding, Which Is Limited to Collateral Attack of His Conviction and Allegations of Such a Gross Violation of Due Process as to Reduce the Trial to a Mockery and a Farce	4
Conclusion	7

TABLE OF CASES

<i>Barber v. United States</i> , 197 F. 2d 815 (10th Cir. 1952), <i>cert. denied</i> 344 U.S. 877 (1953)	5
<i>Burton v. United States</i> , 80 U.S. App. D.C. 208, 151 F. 2d 17 (1945), <i>cert. denied</i> 326 U.S. 789 (1946)	7
<i>Carvell v. United States</i> , 173 F. 2d 348 (4th Cir. 1949)	7
<i>Close v. United States</i> , 198 F. 2d 144 (4th Cir. 1952), <i>cert. denied</i> 344 U.S. 879 (1953)	7
<i>Dauer v. United States</i> , 204 F. 2d 141 (10th Cir. 1953)	7
<i>Jones v. Huff</i> , 80 U.S. App. D.C. 254, 152 F. 2d 14 (1945)	5, 7
<i>Kenion v. Gill</i> , 81 U.S. App. D.C. 96, 155 F. 2d 176 (1946)	5
<i>Kinney v. United States</i> , 177 F. 2d 895 (10th Cir. 1949)	7
<i>Ray v. United States</i> , 197 F. 2d 268 (8th Cir. 1952)	7
<i>Smith v. United States</i> , 88 U.S. App. D.C. 80, 187 F. 2d 192 (1950), <i>cert. denied</i> 341 U.S. 927 (1951)	5
<i>United States v. Bennett</i> , 103 F. Supp. 39 (D.C. Md., 1952)	7
<i>United States v. Hayman</i> , 342 U.S. 205, 72 S. Ct. 263, 96 L. Ed. 232 (1952)	6
<i>United States v. Rosenberg</i> , 200 F. 2d 666 (2d Cir. 1952)	7
<i>United States v. Sturm</i> , 180 F. 2d 413 (7th Cir. 1950)	7
<i>United States v. Walker</i> , 197 F. 2d 287 (2d Cir. 1952), <i>cert. denied</i> 344 U.S. 877 (1953)	5

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,622

ARTHUR ROOKARD, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On May 16, 1949, appellant was indicted for the offense of Grand Larceny allegedly committed on or about March 29, 1949. The acts charged to appellant were the theft of a french horn, of value of \$400.00, and a suit of clothes, of value of \$50.00. Appellant's motion to suppress these two items of evidence was heard and denied by Judge Curran on June 28, 1949. At this hearing appellant appeared in proper person and by his two attorneys, Jack Diamond and Charles H. Garlock. After denial of the motion appellant's counsel and the court openly discussed the merits of pleas of guilty or not guilty. These counsel and appellant made a deliberate and assayed choice of a plea of guilty. (J.A. 16-18.) Subsequently, on August 25, 1949, appellant changed his mind, hired new counsel, Mr. Joseph Di Leo,

and was allowed by the court to withdraw his plea, and enter a plea of not guilty. (J.A. 18-19.)

On October 6, 1949, a trial was held by Judge McGuire upon appellant's plea of not guilty to the indictment. Appellant was represented by counsel of his own choice, Mr. Joseph Di Leo. His counsel objected to the introduction of the two exhibits into evidence (J.A. 20), cross-examined the three Government witnesses (J.A. 21), and after introducing the appellant's case (J.A. 24), presented one witness, Earl Dansby; and finally summarized the case before the jury.

At the trial Police Officer Robert Crawley testified that while patrolling his beat he noticed a lone man, whose features he could at that time distinguish, look around as if to see if any one was watching him, and going from parked automobile to parked automobile peering inside them. After going to a better observing position, this officer saw the same man, appellant, carrying a suit of clothes and what then seemed to be a suitcase. Appellant was crossing a vacant lot leading into an alley. Officer Crawley met appellant at the exit of the alley, and not receiving a reasonable explanation as to the ownership of the two items which appellant was carrying, sent appellant, under custody, and the two items, to the precinct. Officer Crawley then returned to the area in which he had first seen appellant, and encountered Mr. Vincent Stagliano. (J.A. 20-24.)

Mr. Stagliano testified he was a member of a New York symphony orchestra which had played an engagement in Washington that night. Following the engagement he had placed his "work" dress suit and his instrument—a french horn—in the rear seat of his automobile and, with friends, had driven to the area in question to obtain something to eat. He parked his car there and locked it before entering a nearby restaurant. Upon his return he found his suit and instrument missing and that a window of his automobile had been broken open. His friends had summoned the police and he was awaiting them when Officer Crawley appeared. He identified the instrument, with case, and suit

of clothes as being those taken from his automobile. (J.A. 19-20.)

Officer Erfert testified that the french horn introduced into evidence at the trial was the horn which had been sent to the precinct by Officer Crawley, and there held by him, Erfert, until released to Mr. Stagliano. (J.A. 24.)

Earl Dansby, on behalf of appellant, testified he had been in the company of appellant for several hours prior to the events in question. He testified he was present when Officer Crawley arrested and took the appellant from the scene, and that at none of these times did appellant have either of the two exhibits in his possession. He also related events which would have rendered it impossible for appellant to have committed the acts described by Officer Crawley. (J.A. 24-30.)

After being charged by the court—to which no exceptions were taken—the jury returned a verdict of guilty as charged.

After the verdict, the trial judge reviewed appellant's previous criminal record and remarked upon it by saying it appeared that appellant had often worked at a "business" other than his own (J.A. 30). At the subsequent sentencing the trial judge imposed a 2-6 year sentence and remarked that appellant was nothing but a common thief (J.A. 31). This remark was reiterated at a hearing, held November 10, 1949, in which the trial judge denied a motion for new trial filed under 28 U.S.C. 2255. Mr. Di Leo was present at the sentencing and at the hearing held upon the motion for new trial. (J.A. 32.)

Thereafter, appellant made several attempts to prosecute an appeal in forma pauperis. See the files of this Court in Misc. numbers 247, 257, 275 and 304. All such motions were denied. On July 17, 1952, he filed in the District Court a "motion for judgment of acquittal and a new trial" in reliance upon 28 U.S.C. § 2255. This motion was denied without a hearing on September 15, 1952, by the trial judge, Judge McGuire. On October 8, 1952, appellant filed Notice of Appeal from the denial of this motion.

STATUTE INVOLVED

28 U.S.C. 2255 provides in pertinent part:

A prisoner in custody under sentence of a court of the United States claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

* * * * *

SUMMARY OF ARGUMENT

Even if the files and records of the case fail to conclusively show he is entitled to no relief, none of the appellant's allegations bring him within the scope of review under 28 U.S.C. § 2255.

ARGUMENT

Appellant's Allegations Are Not Within the Scope of Review of a Section 2255 Proceeding, Which Proceeding Is Limited to Collateral Attack of His Conviction and Allegations of Such a Gross Violation of Due Process as to Reduce the Trial to a Mockery and a Farce.

Appellant complains that he was not given a hearing upon his motion for "Judgment of Acquittal and New

Trial", and that he was denied relief to which he was entitled by virtue of 28 U.S.C. § 2255. That statute prefaces the requirement of a hearing with the following phrase:

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief * * *.

It is submitted that the files and records of the case do conclusively show this appellant to be entitled to no relief. The pertinent question before the trial court and now before this Court is whether the motion itself sufficiently impinged upon this otherwise conclusive showing as to require a hearing to be held upon the motion.

This Court has ruled that errors which might have been tested on appeal are not grounds for relief under § 2255. *Smith v. United States*, 88 U.S. App. D.C. 80, 187 F. 2d 192 (1950), *cert. denied* 341 U.S. 927 (1951); *Kenion v. Gill*, 81 U.S. App. D.C. 96, 155 F. 2d 176 (1946); *Jones v. Huff*, 80 U.S. App. D.C. 254, 152 F. 2d 14 (1945). Not every infringement of a constitutional right will justify such relief, but only such infringement as make the proceedings a "farce and mockery of justice," and are based upon matters which are outside the record, establishing a lack of or loss of jurisdiction by the court.

Allegations that the evidence does not support the verdict clearly are not sufficient to require a hearing or justify relief under § 2255. The allegation that the evidence used against appellant had been obtained by a search incident to an illegal arrest (being made without probable cause), was heard and denied on the motion to suppress prior to trial. Therefore, no justification appears for a hearing and relief under § 2255. *Barber v. United States*, 197 F. 2d 815 (10th Cir. 1952), *cert. denied* 344 U.S. 877 (1953); *United States v. Walker*, 197 F. 2d 287 (2d Cir. 1952), *cert. denied* 344 U.S. 877 (1953). The allegation of a denial of access to the courts is completely without merit. See Miscellaneous Cases numbered 247, 257, 275 and 304. Prior to this appeal, appellant has always attempted to proceed in this Court at Government expense. The only access to the courts denied appellant have been the result of denials to proceed in forma

pauperis. No person has a right to proceed in forma pauperis unless such right is given him by a court. 28 U.S.C. 753 (f), 1915 (a) and (b). However, as no contest was there made of appellant's poverty affidavit, these denials in and of themselves constituted at least a preliminary review of the merits of the appealable errors now alleged. In effect, therefore, both this Court and the District Court have ruled that the trial contained no substantial errors. Appellant could have best demonstrated the merit of his cause by presenting or alleging the availability of the testimony of the person who he once said gave him the items (two exhibits) to hold. He has never done so.

The only substantial allegation made by appellant involves the Sixth Amendment of the Constitution and his right to have assistance of counsel. In substance, he says his counsel failed to subpoena witnesses as requested by him (Br. p. 4). This seems to be an attempt to bring himself within the recent case of *United States v. Hayman*, 342 U.S. 205, 72 S. Ct. 263, 96 L. Ed. 232 (1952). In that case, unknown to him, Hayman's counsel had also represented (in a separate, but related proceeding) the principal witness against Hayman. The Supreme Court held that such facts required that Hayman be personally present at a hearing held under § 2255.

Appellant is clearly not within the *Hayman* case. The crux of that case was that the pertinent facts had occurred without the knowledge of any lack of diligence on the part of the petitioner. Appellant was possessed of the knowledge that (if the allegation is true) desired witnesses did not appear during his trial. Although he had several opportunities to object, this allegation was not made until some three years later.

In any event, by his own statements the testimony of such witnesses would only corroborate the testimony of Earl Dansby; or, present matter which could have been elicited in cross-examination of Officer Crawley. The effect of the desired testimony would have been to contradict or impeach Officer Crawley—as was in fact done by Earl Dansby, and considered by the jury. Therefore, the allegation is clearly

insufficient to require a hearing. *United States v. Rosenberg*, 200 F. 2d 666, 671 (2d Cir. 1952). This rationalization of the *Hayman* case was the basis of *United States v. Bennett*, 103 F. Supp. 39 (D.C. Md., 1952), affirmed *sub nom. Close v. United States*, 198 F. 2d 144 (4th Cir. 1952), *cert. denied* 344 U.S. 879.

In the *Close* case the Court of Appeals made this pertinent statement:

When parties employ and pay counsel, the court must assume that the representation is satisfactory; and to raise a substantial issue which would justify the court in having the prisoner produced to testify at a hearing, more is required than the mere affidavit of the prisoner as to his conversation with counsel. (p. 145.)

Also pertinent is a passage appearing immediately prior to that quoted by appellant from *Burton v. United States*, 80 U.S. App. D.C. 208, 209, 151 F. 2d 17 (1945), *cert. denied* 326 U.S. 789 (1946):

Here the appellant selected his counsel and made no objection to his conduct of the case during trial. Under such circumstances it is well settled that error in judgment, incompetency or mismanagement of the defense by counsel is generally not ground for a new trial.¹

The trial judge was in the best position to appraise the effectiveness of assistance of counsel and his opinion that there were no merit to the allegations must be given great weight. *Ray v. United States*, 197 F. 2d 268 (8th Cir. 1952).

CONCLUSION

It is respectfully submitted that the District Court was correct in denying the motion to vacate without a hearing; and that the judgment should be affirmed.

LEO A. ROVER,

United States Attorney.

WILLIAM J. PECK,

Assistant United States Attorney.

¹ See also *Dauer v. United States*, 204 F. 2d 141 (10th Cir. 1953); *United States v. Sturm*, 180 F. 2d 413 (7th Cir. 1950); *Kinney v. United States*, 177 F. 2d 895 (10th Cir. 1949); *Carvell v. United States*, 173 F. 2d 348 (4th Cir. 1949); *Jones v. Huff*, *supra*.

JOINT APPENDIX

INDEX

	Record	J. A.
1. Proceedings on Motion to Suppress.....	82-90	13-18
2. Proceedings on change in plea.....	91-93	18-19
3. Direct Examination of Government's Witness, Vincent Stagliano	104-105	19-20
4. Direct Examination of Government's Witness, Officer Robert A. Crawley.....	113-115	20-21
5. Cross-Examination of Government's Witness, Officer Robert A. Crawley.....	119-124	21-24
6. Direct Examination of Government's Witness, Officer Orville L. Erfert.....	125-126	24
7. Testimony of defendant's Witness Earl Dansby.....	128-138	24-30
8. Inquiry by the Court of the defendant.....	164-165	30
9. Proceedings incident to sentencing.....	167-168	30-31
10. Proceedings on Motion for a New Trial.....	169-171	31-32
11. Motion to Suppress.....	2	32
12. Order denying Motion to Suppress.....	3	33
13. Order denying Motion for New Trial.....	11	34

JOINT APPENDIX

82 Washington, D. C., Tuesday, June 28, 1949.

The above-entitled case came on for hearing on Motion to Suppress, at 10:00 o'clock a.m., Tuesday, June 28, 1949, in the United States District Court for the District of Columbia, in the Court House in the City of Washington, District of Columbia.

Before: Honorable EDWARD M. CURRAN, Judge, United States District Court for the District of Columbia.

APPEARANCES:

WILLIAM McKINLEY, Esquire, Assistant United States Attorney, on behalf of the United States; JOHN B. DIAMOND, Esquire, CHARLES H. GARLOCK, Esquire, on behalf of the Defendant.

83 PROCEEDINGS

The DEPUTY CLERK OF COURT: The case of Arthur Rookard.

Mr. GARLOCK: If the Court please, at the time this case was set it was understood that the motion to suppress the evidence would be argued first, and the matter then would depend on the outcome.

The COURT: Very well, excuse the jury.

(Thereupon the jury retired from the court room and the following occurred:)

Mr. GARLOCK: Officer Crawley.

Thereupon ROBERT CRAWLEY was called as a witness and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. GARLOCK:

Q. State your name and assignment, Officer.

A. My name is Robert Crawley; Metropolitan Police Department assigned to the 9th Precinct.

Q. Did you arrest the defendant Rookard?

A. I did.

Q. When and where?

A. On March 29th about 7:00 p.m., on Morris Street, Northeast.

Q. Did you have a warrant for his arrest?

A. I did not.

Q. Where did you first see Rookard on that night?

84 A. The first time I noticed Rookard was on the corner of 4th and Morris, northeast corner.

Mr. GARLOCK: Can Your Honor see this?

The COURT: Yes.

By Mr. GARLOCK:

Q. Will you point out where the defendant was when you first saw him?

A. When I first saw him he was at the northeast corner here.

Q. Where were you?

A. On this corner (Indicating).

Q. Where did the defendant go when you first noticed him?

A. He started to look into parked cars along here.

The COURT: I can't hear you.

The WITNESS: He started to look into parked cars along here.

The COURT: He started to look into parked cars?

The WITNESS: Yes.

By Mr. GARLOCK:

Q. Where were you then?

A. I was standing over here behind the shed.

Q. What, if anything, did you see then?

A. At that time I got in my car and drove to this corner around here.

Q. At that time you didn't know whether the defendant had a car parked up on that street, did you?

A. I did not.

85 The COURT: Did he have anything in his hand when he was looking in these parked cars?

The WITNESS: He did not.

By Mr. GARLOCK:

Q. Did there come a time when you saw the defendant again?

A. Yes, sir.

Q. Where was he then?

A. He was coming from in between two parked cars parked cars just above the lunch room.

Q. And about how far were you from him then?

A. I would say 150 feet.

Q. And did he have anything with him then?

A. He did.

Q. You didn't see where he got that, did you?

A. No, I did not.

Q. What, if anything, did you do?

A. As he went across the vacant lot at the alley, I got in my car and went around the corner and met him.

The COURT: What did he have in his hand, Officer, when you saw him?

The WITNESS: He had a horn in a case and a suit of clothes on his arm.

By Mr. GARLOCK:

Q. At that time you didn't know whether or not that was his property?

A. I did not.

Q. Did you place him under arrest then?

A. I asked him——

86 Q. Did you place him under arrest then?

A. Yes, I did.

Q. Did you take him to the precinct?

A. I did. I sent him to the precinct in the wagon.

Q. What did you ask him at the scene?

A. I asked him where he got that, "Where did you get that?"

He said, "Did you see the man going down the street in the cab? I am holding it for him."

And I said, "Get in the car and we will find him."

Mr. McKINLEY: I show you——

The COURT: Wait a minute. Are you through?

Mr. GARLOCK: No, Your Honor.

By Mr. GARLOCK: What was his condition?

A. What do you mean "condition?"

Q. As to sobriety?

A. Well, I couldn't smell any whiskey on him, or any sign.

Q. Did you notice anything unusual about him?

A. He apparently was under the influence of some kind of dope or drug.

Mr. GARLOCK: That is all.

The COURT: Step down.

(Witness excused.)

The COURT: Is that all you have?

Mr. GARLOCK: No other witness.

The COURT: Denied.

Mr. GARLOCK: May we have a moment, Your Honor?

87 Mr. McKINLEY: May we approach the Bench, if the Court please?

(At the Court's bench:)

Mr. McKINLEY: If the Court please, I am advised by the defense counsel that they wish to enter a plea in this case to petty larceny. The only ground on which the Government is willing to consider this is that the defendant, if he is convicted on any charge, being on parole he has about four years to serve in a previous case of robbery.

The COURT: So what difference does it make what he pleads to?

Mr. McKINLEY: It doesn't. He would have to serve his time.

Mr. DIAMOND: There is one thing: This man received his conditional parole back in 1945 or '46, and since that time, up to this time, he has been on his good behaviour. He hasn't been arrested.

The COURT: I am just a little bit concerned about this plea to petty larceny; if the value was a hundred dollars, something like that, but there is an awful lot of difference between one hundred and four hundred.

Mr. DIAMOND: That is what Stagliano put down there. He doesn't know the value of a French horn.

The COURT: What do you think it is?

Mr. DIAMOND: I wouldn't know whether it was anything from 15 cents to fifteen dollars.

Mr. McKINLEY: It could be anything from \$25 to \$5,000.

88 The COURT: I think you would find the French horn is pretty valuable. What difference does it make? He is going to have to serve his time anyway.

Mr. DIAMOND: I don't know. It will be up to the parole board. It may be forfeited, and he may get out on release; that is why we are appearing for him.

The COURT: In 1933 he got 3 to 5. In 1938 he got 2 to 3 on four counts to run consecutively.

Mr. DIAMOND: This is the case he was on parole.

Mr. McKINLEY: He was convicted of several robberies to run consecutively. It added up to 8 to 12.

The COURT: You are asking me what I will do, would I accept a plea to petty larceny; is that right?

Mr. GARLOCK: That is correct.

The COURT: I don't think I can. I don't see that it makes any difference. He has got a record in 1933 of robbery, and another in 1938 of robbery, and now he comes up charged with grand larceny.

Mr. GARLOCK: Just like this Officer said, there was something the matter with this particular defendant. We don't know whether he takes dope, or not. He swears he doesn't; and he would only have 7 to 8 months to serve.

The COURT: It isn't your fault that he is here today.

Mr. GARLOCK: That is true, but I am here to do what I can for him.

The COURT: Now, my sentences are different on a plea than trial.

Mr. GARLOCK: I understand that, but the Parole Board has said that if he pleads to petty larceny they will
89 consider that fact in connection with releasing him on parole.

The COURT: I can't take that plea on his record. I could on first offense, something like that, but not with his record.

Mr. GARLOCK: The only trouble with a plea to grand larceny is the fact that in addition to his entire parole time that has got to be served, in addition will be the sentence that is imposed at this time.

The COURT: That is right.

Mr. GARLOCK: So the man is going to spend anywhere from 6 to 16 years in jail.

The COURT: That's right if he pleads; if he goes to trial it may be 10 to 30, I don't know. I don't know what defense he could possibly have. I think it is much better to plead him. I am not going to give him a stiff sentence for stealing a horn.

Mr. GARLOCK: I don't think he was in his right mind.

The COURT: Do you want me to order a mental on him?

Mr. GARLOCK: It might be an idea.

The COURT: He isn't crazy.

Mr. GARLOCK: Would Your Honor consider permitting him to stay out on bond pending sentence?

The COURT: It isn't a crime of violence. I don't usually deny it on crimes not of violence.

Mr. DIAMOND: May we have a minute to speak to him?

The COURT: Yes.

(Conference had between defendant and his counsel.)

The COURT: Plea?

90 Mr. DIAMOND: Yes, Your Honor.

The COURT: Plea to what?

Mr. DIAMOND: Grand larceny.

The COURT: Take his plea.

The DEPUTY CLERK OF COURT: Arthur Rookard, in Criminal Case No. 623-49, in which you are charged with grand larceny, do you wish to vacate your plea of not guilty heretofore entered, and enter a plea of guilty of grand larceny?

The DEFENDANT: Yes, sir.

The COURT: I will refer it to the Probation Officer. Is he on bond?

Mr. DIAMOND: Yes, sir.

The COURT: How much?

Mr. DIAMOND: A thousand dollars.

The COURT: He may remain on bond.

(Thereupon, the instant hearing was concluded.)

91

Washington, D. C., August 25, 1949.

The above-entitled action came on for hearing before the Honorable EDWARD M. CURRAN, United States District Judge, at 10:00 o'clock a.m.

APPEARANCES:

On behalf of the United States: WILLIAM S. MCKINLEY, Assistant United States Attorney.

On behalf of the defendant: JOSEPH D. DI LEO, Esq.

92

PROCEEDINGS

The DEPUTY CLERK: United States v. Arthur Rookard, Criminal 623-49.

The COURT: Are you the attorney for this defendant?

Mr. DI LEO: I am supposed to be.

The COURT: Don't you know?

Mr. DI LEO: Yes. The defendant informs me he is not guilty of the offense and he would like to withdraw his plea of guilty and enter a plea of not guilty.

The COURT: He entered a plea of guilty with other counsel. The Government had brought a witness from New York and now the witness has gone back to New York so he wishes to change his plea?

Mr. DI LEO: The only reason I have, sir, is to the effect that he told me he was not guilty of the crime, as charged. He says he did not know what they were talking about at the time the plea was entered. He was not in discussion with counsel.

The COURT: He didn't know what they were talking about?

Mr. DI LEO: That is right.

The COURT: He stood there and entered a plea of guilty.

Mr. DI LEO: That is his story to me, Your Honor. Of course, I was not present.

The COURT: Mr. McKinley, where is this witness now, in New York?

93 Mr. McKINLEY: Yes, in New York. I presume we could get him down here again but it would be an inconvenience.

The COURT: All right. I will set the plea aside, then.

The DEPUTY CLERK: Arthur Rookard, in Criminal 623-49, do you wish to withdraw your plea of guilty heretofore entered and enter a plea of not guilty?

The DEFENDANT: Yes.

(Thereupon, at 10:05 a.m. the proceedings were concluded.)

* * * * *

[Mr. VINCENT STAGLIANO]

[By Mr. ROBERTS]

104 Q. Where did you go, sir, after you parked your car?

A. I went in a restaurant in that vicinity.

Q. What time did you return to your automobile, sir?

A. At approximately 7:15 or 7:30.

Q. At that time, did you find any unusual condition about the automobile?

A. Yes. The right ventilator window had been smashed and I had a dress suit hanging up in the car, and my instrument, the French horn, on the floor in the back of the car and they were both missing at that time.

Q. I show you this that is marked Government Exhibit No. 1 for identification purposes and ask you to open it up and look at it and can you identify that, sir?

A. Yes; this is my instrument.

Q. Is that the instrument that was taken from your car that evening?

A. Yes, it is.

Mr. ROBERTS: The Government at this time will offer this into evidence.

The COURT: Has the jury seen the instrument?

Mr. ROBERTS: I don't know. I was going to wait until it is offered and accepted.

105 The COURT: It is admitted.

Mr. DI LEO: At this time, I was going to make my objection to it on the ground—

Mr. ROBERTS: May we approach the bench?

The COURT: Let's have the objection first. You made the offer and I have ruled on it.

Mr. DI LEO: I object on the ground, sir, that this horn has been continuously in his possession at all times since the date of the act as alleged here. In other words, it has never, to my knowledge, or to the knowledge of the defendant, ever been out of the immediate custody of the owner. In other words, it has been released and has been in his possession from the date it was supposedly taken.

Unless it can be properly identified by others, as being the horn—identified by the police officer—that that particular one is the horn taken at the time of the alleged offense, I object to it.

The COURT: He has testified that he parked his automobile on a certain street in the District of Columbia and went into a restaurant. In the car at the time was a dress suit and a French horn. When he came out, he testified the horn was gone. He identified that as his horn.

It is admitted.

(The horn referred to was marked as Government Exhibit No. 1 and received in evidence.)

* * * * *

[Officer ROBERT A. CRAWLEY on Direct Examination]

113 Q. Calling your attention to that evening at about 7 p.m., were you in the vicinity of the 1200 block of Fourth Street, Northeast?

A. I was.

Q. At that time did you have occasion to see the defendant, Arthur Rookard?

A. I did.

Q. Will you tell the jury what time you saw him and exactly what his actions were from then on?

114 A. About 7 p.m. on the 29th of March, I was standing at the corner of Fourth and Morse Street, Northeast, in front of about 403 and I noticed this man come east on Morse from Fifth and he stopped on the corner in front of a chicken house, stopped and looked all around.

There was nobody in the vicinity but myself. It was just after dark. Then he went and looked in a couple of cars parked there. He looked in them and came back to the curb and looked all around.

I was concealed by a stand at 403 Morse so then he went up the street farther on the 1200 block and I got in my car and drove up Fifth Street and parked above, near Neal, and as I parked, watching down the street for him,

I seen him come out from between two parked cars in front of 1269 Fourth and there is a vacant lot above 1269 and he ducked across the lot into the alley between Fourth and Fifth. He went south in the alley with this package. It looked like he was carrying a suitcase and a suit of clothes over his right arm so I ducked around to the alley and met him, jumped on him and said, "What have you got there?"

He said, "Didn't you see that white man give me this to hold while he went to get a cab?"

I said, "Well, go find him."

I looked in the package and there was this horn and suit of clothes. I sent him to No. 9.

115 I went back to the vicinity to see if anybody had his car broken in and there were two people; this young man who just testified, and his car had been broken and a Dodge right next to him, with a stone, broke the ventilator window, but the Dodge had nothing missing in it, but this young man went right to the station. I sent him to the station.

Q. Is this defendant, Arthur Rookard, the same man who you saw come away from this car carrying these things?

A. He is.

* * * * *

[By Mr. DI LEO]

119 Q. You saw Mr. Rookard come from Fifth to Fourth, is that right?

A. That is right.

Q. Did he pass you?

A. He did not. He was on the opposite side of the street. He was on the north side and I was on the south.

Q. Then what did you see Mr. Rookard do?

A. I stood there and observed him. He was the only man in the block and he went between the cars and kept looking in. There were a lot of cars parked there.

Q. You say you observed him?

A. That is right.

Q. Just walking the street?

A. That is right.

Q. And you saw him walk around cars?

A. That is right.

Q. Where were these cars parked, Officer?

A. Parked in the 1200 block of Fourth Street, Northeast.

Q. Was it light or dark?

A. It was dark. There are three street lights on that block. There is one on the northwest corner of Fourth and

Morse, one up at the middle of the block, and one at Neal Street.

120 Q. But this particular place was dark?

A. No, it wasn't so dark. There was a light across the street from it.

Q. When Mr. Rookard passed on the other side of the street, did not notice him at that time go up the street or down Fourth Street, north or south on Fourth?

A. He didn't go up Fourth Street right then. He stood on the corner and looked all around and then he walked between the cars and kept looking in them.

Q. Were you still on the corner of Fourth?

A. I was.

Q. Was there anything that attracted your attention to Mr. Rookard as he came up Morse Street?

A. No, only he was the only man coming up Morse Street at that time.

Q. Isn't it true you saw a man walking up Morse Street and the only reason you say it was Mr. Rookard was because you later saw Mr. Rookard?

A. I know it was because I saw him go north when I saw him go between the cars.

Q. But you couldn't say from the first time you saw Mr. Rookard, coming up Fourth, and the man walking around cars and between cars up to the time you stopped the man coming out of the alley was Mr. Rookard?

A. I could.

121 Q. You could identify him walking around the cars?

A. Sure; that is right.

Q. How far would you say you were from Mr. Rookard at the time you observed Mr. Rookard walk around the cars and look into the cars?

A. Sixty feet, maybe sixty-five; across the street to the next corner. I believe the street is about sixty foot there.

Q. Do you recall, Officer, what number of the house these cars were parked in front of that were broken into?

A. There are no houses there. These are chicken houses, a market. They were parked opposite 1269 near a vacant lot, the one that was broken in.

Q. Isn't that closer to the next corner from where you were?

A. It is in the middle of the block.

Q. How far in feet would you say it was?

A. How far?

Q. Yes, measure the distance in feet. How far was it

from where you were standing to where these cars were parked?

A. I would say 500 feet. That is a long block and it was right in the middle of the block.

Q. You went that distance—

A. No, I got in my car when I saw him peeping and I parked above. I went to Fifth and parked to watch
122 to see what he was going to do.

Q. You were on Fifth?

A. Neal Street to Fourth.

Q. And you parked how far above him at that time?

A. Oh, I was about, at that time, I guess I was about as far as from here to the monument outside there (indicating), at the foot of the steps. I would say it was 75 feet or 100.

Q. At the time he was walking around these cars, did you approach him?

A. No, I did not.

Q. Did you walk up to the car?

A. I sat in my car.

Q. You sat in your car?

A. That is right.

Q. You sat in your car until you saw him leave?

A. Until he came out between these two cars.

Q. What was he doing, Officer, prior to that, before you got in your car?

A. It was only about five or ten minutes from the time I observed him first until the time he came out between the two cars with the package, and the suit of clothes.

Q. You admit you went around the block?

A. I did. It only took me about a minute to go around the block.

Q. How long were you parked on this other spot,
123 on Fourth Street, where you drove to afterward?

A. Not over two minutes, I don't believe. He came right out between these two cars with the package.

Q. Did you see him after you arrived the second time? Did you see him between the cars at that time?

A. I saw him walk between them and it is dark on that side of the street and he went between the two cars a couple of minutes and then he ran across the lot with these two packages.

Q. Running?

A. Yes; he ran across the vacant lot.

Q. What did you do then?

A. I drove around and pulled right in front of him when he came out of the alley.

Q. When you say you went around the block, how did you go?

A. I came down Fourth and east on Morse and he came out of the alley right there.

Q. At any time, Officer, did you see this man break into the car?

A. I did not see him break into the car.

Q. Did you see him crash any of the windows of either of the cars?

A. I did not.

Q. Did you see him inside the car at any time?

124 A. No, I did not.

Mr. DI LEO: I believe that is all.

Mr. ROBERTS: I have no further questions.

(The witness left the stand.)

* * * * *

[Officer ORVILLE L. ERFERT]

125 Q. You talked to the defendant at the precinct, isn't that correct?

A. I did.

Q. At that time, what did he tell you, Officer, as to how he came into possession of this horn and the suit?

126 A. He told me he had been standing in the 400 block of Morse Street, Northeast, and a white man and a couple of women came up to him carrying this horn and a dress suit and asked him to hold them while he went down or they went down to Florida Avenue to get a taxicab and come back and get the stuff.

Q. You said that at that time he was in the 400 block of Neal Street?

A. Morse Street.

Mr. ROBERTS: I have no further questions.

* * * * *

128 EARL DANSBY was called as a witness by the defense and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. DI LEO:

Q. Keep your voice up so these gentlemen and ladies can hear you, and also the Court. State your full name.

A. Earl Dansby.

Q. Where do you live, Earl?

A. I live at 907 Fifth Street, Northeast.

Q. Do you know Arthur Rookard?

A. Yes, I know him very well.

Q. Do you recall the night you were with Arthur Rookard, the night of March 29, 1949?

A. Yes, sir, I do. He came down to my house about three or four o'clock, somewhere in that neighborhood. We sat around a while.

Q. Keep your voice up.

A. We sat around and chatted until about 6:30, 6:35 and walked up Fifth and Florida Avenue. That was on his way home.

Q. Was that in the morning or in the evening?

A. That was in the evening. He wanted to go by and speak to Clarence, the chef cook. On the way we got some whiskey and we drank all the whiskey, and I said, "Well, we will stop and get some more," so we did and drank it in the alley. He wanted to speak to Clarence so he went to Cannon's Steak House and I was about 20 feet from him.

I seen the officer challenging him and I didn't know what it was all about. I was talking to the other guy.

Q. Did you see Arthur go into Cannon's Steak House?

A. Positively. I did see him go in and talk to Clarence.

Q. Did you see him come out?

A. Yes, sir.

Q. Did he have anything in his hands?

A. No, sir.

Q. Did you see him come out?

A. I was about 20 feet from him.

Q. Did you hear this officer call Arthur?

A. I recognized this officer's challenge but I hesitated because we had been drinking.

Q. Had you all been drinking?

A. We had taken a drink that night, that is true.

Q. When the officer called Mr. Rookard over to the car, did he have anything in his hands?

A. Positively I didn't see anything in his hands when he challenged him at that time.

Q. As he approached the car, did you see anything in his hands?

A. No, sir, positively no, sir.

Q. What did you see the officer do at that time?

A. I think his car was setting over to the right. Arthur Rookard got in that and he carried him down to the box, about three or four light posts below that.

Q. How long would you say, Mr. Dansby, it was when

Mr. Rookard went into Cannon's until the time he came out?

A. I would say it was about five minutes.

Q. Five minutes?

A. Before he came out down the alley where I was.

Q. At no time did he leave you in between that?

A. No time at that time until the officer challenged him when he came out of the alley there.

Mr. DI LEO: I believe that is all, may it please the Court.

131 CROSS-EXAMINATION.

By Mr. ROBERTS:

Q. When did you first see Mr. Rookard on that evening?

A. That was about—as I told you, he came down to my house about 3:30 or 4 o'clock. I don't know the definite time. I know it was in the afternoon.

Q. What day of the week was that?

A. On a Tuesday, I believe.

Q. Where do you work?

A. I work at 1351 Connecticut Avenue.

Q. What type of work do you do?

A. I cook.

Q. What hours do you work there?

A. From eleven until eight at night.

Q. Eleven in the morning until eight at night?

A. Yes, sir.

Q. But you didn't work on this particular day?

A. I was cooking over at May's Seafood place at this particular time at 1127 Howard Road, Southeast.

Q. What were your hours there?

A. Four to twelve at night.

Q. What days of the week were you working?

A. Tuesday was my day off.

Q. Tuesday was your day off?

A. Yes, sir.

132 Q. And you saw him from three o'clock until 6:30 or 6:45. Where did you go when you left your house?

A. I was walking part of the way with him to go home.

Q. You walked with him to go home?

A. Down at Fifth and Florida Avenue, yes.

Q. Where were you going with him at that time?

A. I was only going to the store to pick me up some whiskey.

Q. Where is that store located?

A. Fifth and Florida Avenue.

Q. You live south of Florida Avenue, is that correct?

A. I would say so.

Q. And you walked up to Fifth and Florida Avenue with him?

A. Yes, sir.

Q. He left you then and went on, didn't he?

A. I walked on over. We taken a drink, as I told you, and he went up to speak to Clarence.

Q. Where did you go?

A. Why, at that particular time, when the officer challenged him, I went on to the house.

Q. Before you bought the whiskey and went to have a drink with him and he went on to Cannon's, where did you go?

A. I know a lot of people there, right at the fish market.

I was talking to some of the boys around there.

133 Q. Who did you talk to around there?

A. For me knowing their names, I wouldn't know their names; just from me working around there.

Q. What time was this?

A. Around 6:45, 7 o'clock, something in the neighborhood of that.

Q. The fish market was there?

A. The boys was there. Whether the market was open, I don't know. The boys were standing around, as they usually do, standing around and chatting a while.

Q. What happened then?

A. After that, I saw this officer challenge this boy and I goes back to the house where I was supposed to be. I didn't know whether he was locking him up because he had been drinking or not.

Q. How far away from him were you when the officer stopped him?

A. I would say approximately 20, 25 feet. I would suggest that.

Q. Did you know he had stopped Rookard at that time?

A. Definitely. I know Rookard. I didn't know whether the officer was locking him up or not.

Q. Did you know it was Rookard that he had stopped?

A. Yes, I knew that.

Q. Or could it have been someone else?

134 A. At that distance I knew it was Rookard. At 20 feet, I could see him.

Q. Then what did you do? You say you went on?

- A. Yes, sir.
- Q. You didn't go up to the officer and ask him what he was doing with Rookard?
- A. No, sir, I didn't challenge the officer whatsoever.
- Q. What did he say to Rookard when he stopped him?
- A. He just called him, I think. I couldn't state the words he said. He challenged him and stopped him.
- Q. Was the officer in a squad car at that time?
- A. I don't remember whether it was a squad car or a civilian car.
- Q. Was he in a car or on foot?
- A. I believe his car was parked on the street. I think it was.
- Q. When you saw him, where was he?
- A. When I saw the officer?
- Q. Yes.
- A. I saw him standing at his car and challenge Mr. Rookard.
- Q. Where was Rookard?
- A. Rookard was coming down the alley after me from Cannon's.
- Q. Was the car right at the mouth of the alley or across the street?
- 135 A. Across the street on the right side coming up Morse Street. It will be on the right.
- Q. Where is this alley?
- A. That is between the Southern Meat House and the Chicken House there.
- Q. It comes out on Morse Street, doesn't it?
- A. It comes out on Morse Street, yes, sir.
- Q. And you were there at the chicken market?
- A. No, I was up there at 416, the Southern Meat Market and Fish Market, all in there together.
- Q. A fish market?
- A. Yes, and also the old Southern Meat Market.
- Q. You say you were with other people, is that correct?
- A. Yes; I know a lot of people, a lot of boys.
- Q. You didn't stay there after the officer called Rookard over?
- A. I didn't stay too long; I would say five or ten minutes. Then I walked to the house.
- Q. Was the officer and Rookard still there?
- A. No; he put Rookard in the car and drove him to some box around there, I guess.
- Q. Were you here on June 21st in this court?
- A. No, sir.

- Q. Did you have a subpoena to come here that day?
 136 A. No, sir.
 Q. Were you here on June 23, 1949?

Mr. DI LEO: I object to this line of questioning. I don't see what relevancy that has to the case.

The COURT: You had better come to the bench and indicate that to me.

(Thereupon counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

Mr. ROBERTS: This case was called on both of those dates and he finally pled guilty later. I am trying to show now that this man never has been here until today as a witness.

The COURT: You may ask him if he was subpoenaed on that date because, if he wasn't subpoenaed, he had no obligation to come.

(Thereupon counsel resumed their places at the counsel table and the following proceedings were had in the hearing of the jury:)

By Mr. ROBERTS:

Q. Were you subpoenaed to come here in this court house on June 21st?

A. No, sir.

Q. Were you subpoenaed to come here on June 23rd?

A. No, sir.

Q. When did you next see Rookard after this occurrence over there near the market?

137 A. After this occurrence there at the market, I think it was three or four weeks later, I think. He called up. I disrecall.

Q. Did you say anything to him at that time?

A. He called up and just chatted with me, as you do, on the phone.

Q. When is the first time that you were subpoenaed to be here in this court?

Mr. DI LEO: I object to this. This is repetitious, Your Honor. He never said he was ever subpoenaed and counsel is trying to bring some other point out. He denies ever being subpoenaed.

Mr. ROBERTS: I take it he was subpoenaed to be here today.

The COURT: You may ask him.

By Mr. ROBERTS:

Q. When is the first time you were subpoenaed to be here?

A. I have never been subpoenaed to be in this court.

Q. How do you happen to be here today?

Mr. Di LEO: I object to this. He is here.

The COURT: Overruled.

By Mr. ROBERTS:

Q. How did you happen to come down here today?

138 A. Well, he is a friend, and I am a friend, and I knew he was in trial and I came to verify his statement.

Q. He knew you had been with him, didn't he?

A. Why, sure.

Mr. ROBERTS: I have no further questions.

Mr. Di LEO: I have no further questions.

(The witness left the stand.)

Mr. Di LEO: The defense rests its case, may it please the Court.

* * * * *

164 The COURT: Now, you are here for grand larceny. Are you married?

The DEFENDANT: No, sir, I am not married.

The COURT: What do you do for a living between these intervals when you are in and out of jail?

The DEFENDANT: I work every day, Your Honor.

The COURT: You work every day?

The DEFENDANT: Yes.

165 The COURT: I know you do, from the record, but you don't work at legitimate business. You work at somebody else's business.

I will remand you and check with the Probation Officer and dispose of this next Friday, a week from tomorrow.

(At 12:35 o'clock p. m. the trial was concluded.)

167

PROCEEDINGS

The DEPUTY CLERK: United States v. Arthur Rookard, Criminal 623-49.

The COURT: Mr. DiLeo, here is a man who likes French horns, broke into an automobile and stole a French horn

worth \$450 and went to trial and was found guilty by a jury. He has a previous record as a thief, starting way back in 1930 in Niagara Falls, New York, for petit larceny.

Is that right?

The DEFENDANT: Yes.

The COURT: Forty-three years old now. In 1932, Washington, D. C., assault; 1933, Washington, D. C., robbery, three to eight years. Right?

The DEFENDANT: Yes, sir.

The COURT: January 13, 1938, robbery, Washington, D. C.; two to three years, consecutive, making a total of nine to twelve years. Right?

The DEFENDANT: Yes, sir.

The COURT: Then picked up disorderly, threats, disorderly, disorderly, and now you are in here for grand larceny.

Mr. DI LEO: There is not much I can say, Your Honor, in view of the record, except he did not take the stand.

The COURT: You haven't any doubt about the fact he stole the horn, have you? I won't permit you to answer that question—but I haven't any doubt. He was found
168 guilty by a jury on evidence that would convince even the most adamant mind.

I have no sympathy with you at all. You are just a common thief, that is all. There is altogether too much business like that going on in this town and I am going to send you away. I have no sympathy for you at all.

Arthur Rookard, the Court, in consideration of your offense, sends you to a prison for not less than two nor more than six years.

The DEFENDANT: I want to appeal.

The COURT: You don't serve notice on me.

Mr. DI LEO: May I have Your Honor's permission to withdraw from this case?

The COURT: You take that matter up with him.

Mr. DI LEO: And I will file a praecipe.

(Thereupon at 10:10 o'clock a. m., the hearing was concluded.)

169

Washington, D. C., November 10, 1949.

The above-entitled action came on for hearing on motion for a new trial, filed by the defendant, before the Honorable MATTHEW F. McGUIRE, United States District Judge, at 10:00 o'clock a. m.

APPEARANCES:

On behalf of the United States: RICHARD M. ROBERTS,
Assistant United States Attorney.

On behalf of the defendant: JOSEPH D. DI LEO, Esq.

170

PROCEEDINGS

The DEPUTY CLERK: United States v. Arthur Rookard,
Criminal 623-49.

The COURT: You filed a motion for a new trial, prepared
by yourself in the jail. Mr. DiLeo was your counsel.

Mr. DI LEO: I was employed by him.

The COURT: What have you to say?

The DEFENDANT: I would appreciate your appointing
counsel.

The COURT: I won't appoint another counsel.

Were you appointed by the Court, Mr. DiLeo?

Mr. DI LEO: No.

The COURT: You were employed by him?

Mr. DI LEO: Yes.

The COURT: You have counsel employed by you.

The DEFENDANT: I would appreciate a new trial. I would
appreciate the Court appointing another counsel for me.

The COURT: I won't appoint another counsel for you.

The DEFENDANT: If I am forced to take him by the Court,
I will have to take him.

The COURT: Your motion for a new trial is denied.

The DEFENDANT: I will appeal. I will appeal to the Court
of Appeals.

The COURT: That is fine. You don't have to serve notice
on me for appeal.

171 In my estimation, you are just a common thief.

(Thereupon the hearing was closed.)

2 IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA, CRIMINAL DIVISION

Criminal No. 623-49

UNITED STATES

v.

ARTHUR ROOKARD

MOTION TO SUPPRESS

Filed June 9, 1949. Harry M. Hull, Clerk.

Comes now the defendant by his attorney and respectfully
moves this Honorable Court to suppress and return to him

the evidence taken from him at the time of his arrest in the instant case, and for cause sets forth the following:

1. That defendant was illegally arrested, detained and searched by the Metropolitan Police.
2. That defendant was searched and his property taken from him in violation of his constitutional rights.
3. For such other and further reasons as may be urged at the hearing of this motion.

CHARLES H. GARLOCK,
Attorney for Defendant,
 412 5th Street, NW,
 EX. 0549.

3 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
 COLUMBIA

Criminal No. 623-49

Charge, Grand Larceny

UNITED STATES

vs.

ARTHUR ROOKARD, DEFENDANT

Filed June 28, 1949. Harry M. Hull, Clerk.

On this 28th day of June, 1949, came the attorney of the United States; the defendant in proper person and by his attorneys, Jack Diamond and Charles H. Garlock; whereupon the defendant's Motion to Suppress Evidence coming on to be heard, after argument by counsel, the said motion is by the Court denied.

By direction of

EDWARD M. CURRAN,
Presiding Judge,
Criminal Court # 2.

HARRY M. HULL,

Clerk.

By DANIEL J. MENCOBONI,
Deputy Clerk.

Present: United States Attorney, By William McKinley,
 Assistant United States Attorney.
 Ralph Minier, Official Reporter.

• • • • •

11 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Criminal No. 623-49

Charge, Grand Larceny

UNITED STATES

vs.

ARTHUR ROOKARD, DEFENDANT

Filed November 14, 1949. Harry M. Hull, Clerk.

On this 10th day of November, 1949, came the attorney of the United States and the defendant in proper person, whereupon the defendant's motion for a new trial coming on to be heard, after argument by the defendant, is by the Court denied.

The defendant is remanded to the District Jail.

By direction of

MATTHEW F. MCGUIRE,
Presiding Judge,
Criminal Court #2.

HARRY M. HULL,

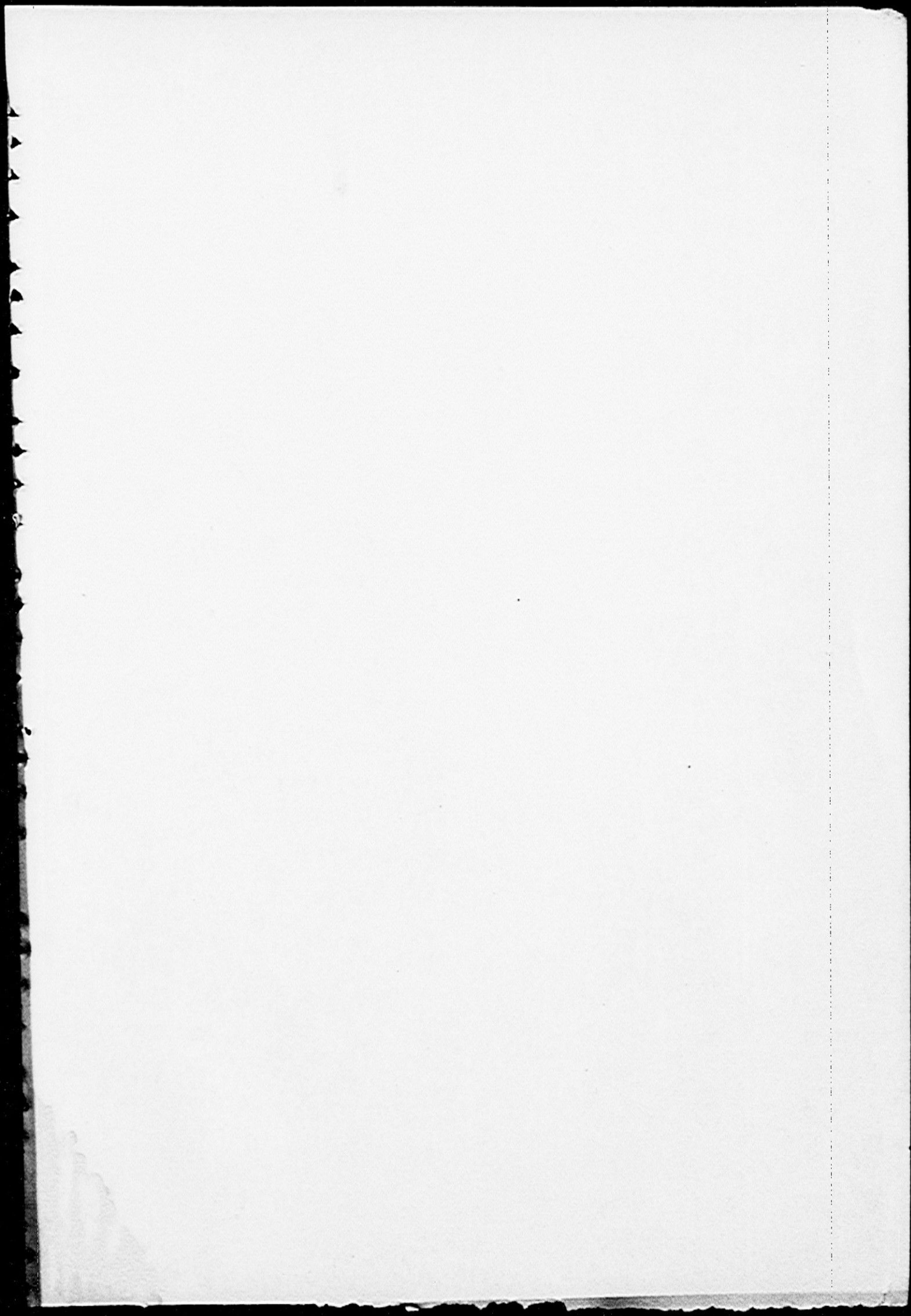
Clerk.

By (S.) C. H. MILSTEAD,

Deputy Clerk.

Present: United States Attorney, By (S.) Richard Roberts, Assistant United States Attorney.

J. Rawls, Official Reporter.



United States Court of Appeals
For the
District of Columbia Circuit
FILED JUL 8 1953

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
APRIL TERM, 1953

Joseph W. Stewart
CLERK

Number 11,622

JUL 8 '53

ARTHUR ROOKARD,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ARTHUR ROOKARD,
Appellant Per. Se.
Box P.M.B. 69896-A
Atlanta, Georgia

TABLE OF CONTENTS

	<i>Page</i>
Questions Involved	ii
Jurisdictional Statement	1-3
Statement of Case	4-5
Statutes Involved 28 U.S.C. 2255	3-6
Summary of Argument	5-8
Conclusion	8

CASES CITED

	<i>Page</i>
<i>Carroll v. United States</i> , 267 U. S. 132	2
<i>Brinegar v. United States</i> , 338 U. S. 160, 175	2
<i>Seymour v. United States</i> , D. C. App. 177, Fed. 2nd. 732	2
<i>Newyahr v. United States</i> , 177 Fed. 2nd 658	2
<i>United States v. Lowe</i> (C. A. 2, 1949) 173 F. 2nd. 346	6
<i>Burton v. United States</i> (1945) 80 U. S. App. D. C. 208, 151 F. 2nd. 17, Cert. Den. 326, U. S. 789	7
<i>Jones v. Huff</i> (1945) 80 U. S. App. D. C. 255, 152 F. 2nd. 14	7

QUESTIONS INVOLVED

Whether it conclusively appears that a defendant is not entitled to an order to arrest the judgment when it is alleged without denial that the evidence does not support the verdict.

Whether a search and seizure, which precedes and is the bases for an arrest, is legal.

Whether a defendant who is denied access to the Courts has been given due process of the law.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
APRIL TERM, 1953

Number 11,622

ARTHUR ROOKARD,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

Jurisdictional Statement

The appellant in Case Numbered 623-49 was indicted on the 16th day of May, 1949, (R. Pg.....), for the offense of Grand Larceny as defined in Title....., Section....., of the Code of Law for the District of Columbia.

That appellant was arrested, without a warrant, on the 29th day of March 1949, (R. Pg. 24). In the proceedings held on the 28th day of June, 1949, the arresting officer admitted (R. Pg. 4) that he did not know whether the property which

he allegedly saw in the possession of, and took from the defendant Rookard, was the legal property of the defendant or not. After admitting that he was without probable cause of his own knowledge or even from reliable information given him, he admits, (R. Pg. 5), that he placed the defendant under arrest and discovered, some time later, that a crime had been committed. The motion to suppress was denied summarily and the court and defense counsel entered into a discussion at the Bar. The court, as may be seen from the record, was eager for a plea to the charge of Grand Larceny.

In *Carroll v. United States*, 267 U. S. 132, it was held that if a search and seizure without a warrant are made upon probable cause; that is, upon a belief, reasonably arising out of circumstances *KNOWN* to the seizing officer, that such search and seizure is valid. It is respectfully submitted that by the officer's own testimony he did not *KNOW* that a crime had been committed. That the arrest and alleged seizure was not bottomed upon facts and circumstances within (the officer's) *knowledge* and reasonably sufficient in itself to warrant a man of reasonable caution in the belief that "an offense has been or is being committed." *Carroll v. U. S.*, 267 U. S. 132; *Brinegar v. United States*, 338 U. S. 160, 175; *Seymour v. United States*, D. C. App. 177 Fed. 2nd. 732, *Newyahr v. United States*, 177 Fed. 2nd. 658.

It follows that the arrest of and alleged search and seizure of defendant Rookard was without probable cause.

It is admitted that, had the search herein complained of been incident to a legal arrest, that same would have been valid as to both search and seizure.

The appellant herein attempted in his own manner to secure an appeal to which he is entitled under Title 28, Section 1291,

et. seq. of the United States Code. (See page 78 of the record). Appellant herein made known to the court his desire for an appeal and (in appellant's opinion because of the court's attitude), Mr. Di Leo asked for permission to withdraw from the case. The withdrawal of Mr. Di Leo was as effective as though praecipe had been filed and permission granted for his withdrawal.

The appellant herein did as well as he could, with no knowledge of law, and very little education to prepare and file a motion for a new trial. This motion was denied without hearing the merits and without appointing counsel to represent the defendant, even though Mr. Di Leo was reluctant and did not utter one word in behalf of the defendant.

The defendant again, (R. Pg. 80), notified the court of his intention and desire for an appeal and subsequently wrote several letters designed to serve as Notice of Appeal.

The Supreme Court has held in a case analogous to and identical with the circumstances of attempted appeal that such oral and written notice is sufficient to protect the right of appeal.

Appellant does not possess the citation but is sure that the court will recall the circumstances. The Petitioner in that case filed a petition for habeas corpus to the Supreme Court of the United States from the Institution at Lawton. The Supreme Court denied his petition but directed that he be given a direct appeal in the original conviction.

Your Appellant has repeatedly tried to obtain redress and still avows that he is innocent of the crime charged. He has heretofore filed Motion to Vacate under authority of Title 28, Section 2255, U. S. C. It is from the final order of denial of this motion filed Sept. 15, 1952 that this appeal is taken under authority of Title 28, Section 1291 et. seq. United States Code.

STATEMENT OF THE CASE

Appellant, defendant below, was arrested in the 400 block of Morse Street in the District of Columbia on the 29th day of March, 1949. The arrest took place without benefit of a warrant or knowledge by the arresting officer that a crime had been or was being committed.

Because of his poverty and the attitude of the court the defendant has not, until now, been given an opportunity to offer his defense.

On the night in question, (March 29, 1949), the defendant was in the company of one or more friends up until the time of his arrest. Earl Dansby was with the defendant from about 3:00 P.M. until his arrest. There were four other people who were with, or in the company, of the defendant, now appellant herein. The four persons above-mentioned were:

Clarence Hammit, 463 Delaware Ave., S. W.

John Davison, 2222 Georgia Ave., N. W.

A man named Stanley of No. 12 Logan Circle, N. W.
and a waitress named Dolly, whom the defendant
talked with that night.

These witnesses' names were given to his counsel with the request to have them subpoenaed. He was assured that the witnesses were unnecessary as no case could be made against him that would result in conviction.

Not only would these witnesses have established an alibi but Clarence Hammit, who was a cook at Cannon's Steak House, would have testified that Earl Dansby told him that the defendant had been arrested and that when he got off from work he asked the arresting officer what Rookard had been arrested for and that the officer (Crawley) told him for being "Drunk,"; that this occurred around midnight, and that by his testimony

the Jury could have discerned that at this time the officer still had not decided to charge the defendant, Rookard, with larceny.

Officer Crawley attempts to refute this fact, (R. Pg. 5), by his assertion that "He was apparently under the influence of some kind of dope or drug."

The fact remains, however, that the defendant was not booked originally for larceny and the indictment was delayed much longer than usual for the usual case within the District of Columbia.

Appellant has persistently and continually attempted to get his case before the court in order that he might bring forth the facts as he knows them to be. He has, from the very beginning, asserted and reasserted his innocence. In a matter of a few days he will have completed the sentence as imposed yet he still insists upon the right of review and fully realizes that he stands again in jeopardy.

The court below has persisted in its refusal to afford the appellant, defendant below, an opportunity to appear in court and put on evidence that would prove his allegation of innocence and, moreover, the fact that he was *framed*.

ARGUMENT

I.

The search and seizure from which the case allegedly evolved would be illegal even if it had occurred as testified to by the arresting officer.

The arrest as testified to by the arresting officer would have been illegal since he, admittedly, did not know a crime had been committed when he searched the defendant and allegedly seized him and took the articles from his possession, even though he placed appellant, defendant below, under arrest as

a result of his search and seizure. It being well established at law that a search and seizure be incident to a lawful arrest and not the arrest incident to, and the fruit of, an illegal search and seizure.

May it be remembered by this Honorable Court that the appellant has, and still insists that he was arrested without anything in his possession and that the case was developed while he was being held, supposedly, as a common drunk. Appellant finds the argument upon illegal search and seizure rather bizarre since the articles were never in his possession.

For the purpose of obtaining a hearing, the argument above included is offered supporting that even had the events occurred as sworn to, his conviction would have been fatally defective for illegal search and seizure *followed by* and *not following* an arrest.

II.

Denial of Motion to Vacate Sentence pursuant to the provisions of Title 28, Section 2255, U. S. Code without taking of testimony to sustain or refute facts which deports the record and the findings of fact and conclusions of law is reversible error.

A tendency occasionally noted is to dispose of contentions such as were contained in the several documents which were filed by appellant in the court below on grounds of inherent improbability. E.g., in *United States vs. Lowe*, (C. A. 2, 1949), 173, F. 2nd. 346, defendant filed a motion under Section 2255 alleging that his plea of guilty was induced by an agreement between the Assistant District Attorney and employed counsel. It was held that this mere charge did not require granting the motion because "the charge was evidently an afterthought. Had it any substance, the defendant would have protested it at his sentence when it was imposed and then and there sought to withdraw his plea and go on trial on the merits."

In the instant case, appellant Rookard withdrew a plea of guilty entered for him and found it necessary to change counsel in order to contest the case. Counsel seems to have been under pressure by the court throughout the proceedings in the court below. The Court expressed its convictions in very forceful language and, even though these convictions were honest and based upon testimony, however fallacious, they were, to say the least, improper and highly irregular. The Court seems to have usurped the duties of the prosecuting agency.

This Court has avoided reliance on principles of agency in acknowledging that the acts of employed counsel are not wholly attributable to the client. Thus in *Burton v. U. S.*, (1945) 80 U. S. App. D. C. 208, 151 F. 2d. 17, Cert. den. 326 U. S. 789, while finding no occasion to give relief, the Court did say:

"This is not to deny that a defendant's rights may be so flagrantly disregarded by counsel of his own choosing, and, as a consequence Justice so manifestly miscarry, that a new trial should be ordered."

The "inherently improbable" view has also been distinctly repudiated. In *Jones vs. Huff*, (1945) 80 U. S. App. D. C., 255, 152 F. 2d. 14, petitioner alleged that a third degree confession of a forgery charge was received without objection from employed counsel; that his attorney did not call witnesses whose names were furnished by petitioner; that the attorney offered no defense nor did he procure handwriting and failed to comply with a Jury request for a sample of petitioner's handwriting. Denial of a Writ of Habeas Corpus was reversed with this admonition:

"Even if the allegations of the petition are improbable and tax credulity, the petitioner has a right to support them by evidence."

Appellant herein has repeatedly sought access to the courts and an opportunity to support his allegations by sworn testi-

mony, evidence and witnesses. Denial of this opportunity is a Denial of his Constitutional Right to "Due process of the law" and is repugnant to the Fifth Amendment to the U. S. Constitution.

CONCLUSION

Skepticism based on experience is not an adequate basis for disposing of individual cases. Questions of fact are presented which prevent dismissal without hearing. Reluctance to perpetuate charges of this nature is overborn by the uneasiness lingering after rejecting them without hearing.

Appellant is entitled to his "day in court" to prove his allegations, and for just cause shown reversal is earnestly urged.

Respectfully submitted,

ARTHUR ROOKARD,
Appellant Per. Se.
Box P.M.B. 69896-A
Atlanta, Georgia

APPENDIX

Letter from Chief Judge Laws	1
Letter from the Clerk of the U. S. District Court	2
Return from Joseph D. Dileo	3

1

November 3, 1949

Mr. Arthur Rookard,
200 19th Street, S. E.,
Washington, D. C.

Dear Sir:

Chief Judge Laws has received your letter of the 24th ultimo and has asked me to reply to it for him.

The matter referred to in your letter is one which must be handled by the Clerk's Office and I, therefore, am sending your letter to the Clerk's Office for their attention.

Very truly yours,
MRS. GERTRUDE P. CAVE
Secy., to Chief Judge Laws

2

November 10, 1949

Mr. Arthur Rookard, DCDC 2670,
D. C. Jail,
200 19th St., S. E.
Washington, D. C.

Dear Sir:

Receipt is acknowledged of your letter of November 7, 1949.

This office is unable to locate any letter addressed by you to Chief Judge Laws, which you state was referred to this office under date of November 3rd.

However, for your information, this office has no authority to appoint a counsel to represent you.

You will renew your request to the Court which will be assigned to hear your motion for a new trial, or submit a motion for appointment of counsel, for presentation to the Court for consideration.

Very truly yours,
HARRY M. HULL, Clerk
By R. M. Stearns
Deputy Clerk

RMS/DB

May 29, 1951

Mr. Gilbert L. Hall
Committee on Admissions and Grievances
Standard Oil Building
Washington, D. C.

In Re: United States vs. Arthur Rookard, Cr. No. 623-49.

Dear Sir:

Replying to your letter of May 14th, 1951, I wish to state as follows:

1. That on October 21, 1949, Arthur Rookard was sentenced from two to six years and at that time I asked to withdraw as counsel for the said Arthur Rookard. To the best of my knowledge there was no mention by the Court or anyone else to note an appeal at that time. If Arthur Rookard had requested an appeal in open Court, I feel more than certain that his Honor, Judge Matthew McGuire, would have so noted same.

2. That I received to the best of my knowledge not more than \$50.00 for my services, which consisted of having Rookard's former plea of guilty set aside and a plea of not guilty entered. That I represented Rookard through the entire trial diligently and to the best of my ability. That my fee of \$200.00 for trial only, left Rookard owing me about \$150.00. I was not retained further.

3. That Arthur Rookard was given more than a fair trial and was fairly convicted. To my knowledge there were no errors committed during the trial that would permit or go up on appeal and I so informed Mr. Rookard of same immediately after trial. I also told Mr. Rookard that he has a period of days in which to obtain counsel to file an appeal and that I was not going to do it for reasons hereinbefore stated. Mr. Rookard informed me prior to trial that he had no former convictions; however, the trial showed he had been previously convicted on other charges. The statement made by Judge McGuire had no bearing on the actual trial as Mr. Rookard had already been convicted. That the record reveals that other members of the Court and Court of Appeals did not find merit or any grounds for an appeal.

/s/ JOSEPH D. DILEO

Subscribed and sworn to before me on this 29th day of May, 1951.

/s/ FRANCIS G. BOWELL
Notary Public, D. C.

